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Report on the human rights situation in Ukraine 16 May to 15 August 2018

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Contents

		Page
I.	Executive summary	4
II.	OHCHR methodology	6
III.	Impact of hostilities	6
	A. Conduct of hostilities	6
	B. Situations at the contact line and rights of conflict-affected persons	10
IV.	Right to physical integrity	14
	A. Access to detainees and places of detention	14
	B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment	15
	C. Situation of pre-conflict prisoners	17
	D. Missing persons	18
V.	Administration of justice	18
	A. Fair trial rights	18
	B. Accountability for cases of violence related to riots and public disturbances	20
	C. Territory controlled by armed groups	22
VI.	Democratic/civic space and fundamental freedoms	23
	A. Freedom of opinion and expression and freedom of the media	23
	B. Discrimination, hate speech, racially-motivated violence and manifestations of intolerance	25
	C. Freedom of peaceful assembly and association	26
	D. Freedom of religion or belief	27
VII.	Human rights in the Autonomous Republic of Crimea and the city of Sevastopol	28
	A. Due process, fair trial rights, and rights of detainees	28
	B. Freedom of religion, conscience and thought	29
	C. Right to privacy and family life	29
	D. Property rights	30
VIII.	Technical cooperation and capacity-building	30
IX.	Conclusions and recommendations	31

Ukraine: Civilian casualties along the contact line, 16 May - 15 August 2018
Zolote
Stanytsia Luhanska
Maiorske
Marinka
Novotroitske
Pyshchevyk
RUSSIAN FEDERATION
Civilian Deaths
1 - 2
3
Civilian Injuries
1 - 4
5 - 7
8 - 10
HRMMU office locations in Ukraine
Non operational checkpoint
Operational checkpoint
Contact line
Settlement
Neighbouring country

I. Executive summary

1. This twenty-third report on the situation of human rights in Ukraine by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)[1], and covers the period from 16 May to 15 August 2018.

2. During this reporting period, OHCHR documented more than 160 violations and abuses which affected a total of 282 victims, representing a level of human rights violations and abuses similar to the previous reporting period.[2] Of these, 85 human rights violations and abuses were committed during the reporting period. The Government of Ukraine was responsible for 53 violations (62 per cent of those recorded), armed groups for 10 (12 per cent of those recorded), and the Government of the Russian Federation (as the Occupying Power[3] in the Autonomous Republic of Crimea and city of Sevastopol[4]) for 22 (26 per cent of those recorded).[5]

3. While OHCHR is fully operational in government-controlled territory, during the reporting period it faced increased restrictions in its operations in armed group-controlled territory of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic'[6]. OHCHR continues to monitor remotely the human rights situation in Crimea, under the temporary occupation of the Russian Federation which continues to disregard its obligations as an occupying power under the Fourth Geneva Convention by failing to respect the laws of the occupied territory.[7]

4. The active conflict in eastern Ukraine continues disrupting civilian life and causing deaths, injuries and destruction. The periodic spikes and lulls in civilian deaths and injuries reflect the volatile situation and sustained atmosphere of insecurity and anxiety that characterizes civilian life on both sides of the contact line. Between 16 May and 15 August 2018, OHCHR recorded 105 civilian casualties in eastern Ukraine (12 deaths and 93 injuries), which constituted a 30 per cent increase compared to the previous reporting period. Most of the incidents occurred between mid-May through June. Fifty per cent of casualties were caused by shelling or light weapons, the majority recorded in armed group-controlled territory and attributable to the Government. Following 1 July, when the "harvest ceasefire" took effect, the numbers of civilian casualties dropped significantly, demonstrating the importance of concerted efforts to secure a sustainable ceasefire.

5. This report stresses how the hostilities and extreme levels of landmine and explosive remnants of war contamination continue to have devastating effects on the protection of civilians, access to social and economic benefits, and freedom of movement for both, civilians living in the conflict zone and those who are internally displaced. Increased hostilities in May-June 2018 worsened the immediate and long-term human rights protection of people living in the affected areas, serving as a harsh reminder that the armed conflict directly affects more than 600,000 people, who live within the range of five kilometers on both sides of the contact line.

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[1] HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7-8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

[2] During the previous period covering the period of 16 February to 15 May 2018, OHCHR documented 321 human rights violations and abuses, which affected 252 victims. Of those, 112 human rights violations and abuses occurred during the reporting period.

[3] *See* United Nations General Assembly resolution 71/205 of 19 December 2016 referring to Crimea as occupied by the Russian Federation, and resolution 72/190 of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea.

[4] Hereinafter "Crimea".

[5] These numbers do not include civilian casualties caused by the armed conflict.

[6] Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.

[7] United Nations, General Assembly resolutions referring to Crimea (A/71/205 and A/72/190).

6. OHCHR examined the situation of civilians from the area of Chyhari on the contact line following the operations by Ukrainian forces to take control of the area in mid-May 2018. In addition to increased risks of death and injury from shelling and explosives, OHCHR observed impediments related to the rights to restitution and compensation for use, damage or destruction of private property.

7. Inextricably linked to the hostilities are the persisting conflict-related serious human rights violations and abuses attributable to all parties, including unlawful or arbitrary detention, incommunicado detention, torture, ill-treatment, sexual violence, and/or threats to physical integrity. OHCHR documented 74 such violations and abuses – 15 of which were committed during the reporting period. The Government of Ukraine was responsible for ten of these (67 per cent), armed groups for three (20 per cent); and the Russian Federation as the occupying power in Crimea for two (13 per cent).

8. In armed group-controlled territory, OHCHR is still denied access to the detention facilities for confidential interviews, which raises concerns about the detention conditions and treatment of detainees. In government-controlled territory OHCHR generally continued to enjoy access to official places of detention and the ability to conduct confidential interviews of detainees in line with international standards.

9. OHCHR continued documenting violations of fair trial rights in conflict-related cases, and is concerned that arbitrary implementation of plea bargains and in absentia proceedings may be used in a manner that risks circumventing essential judicial guarantees. OHCHR is further concerned by attacks on, and intimidation of, defence lawyers by members of extreme right-wing groups, and continuing interference with the independence of judges. On a positive note, some procedural hurdles were removed for genuine prosecution of murder charges concerning the 2014 Maidan protests, and indictments were filed against former police related to 2 May 2014 violence in Odesa.

10. The people living in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' remained subject to the decisions of parallel structures of 'administration of justice'. Pre-conflict prisoners whose appeals were not heard prior to the outbreak of the conflict and individuals who 'appealed' their 'conviction' by the armed-group 'courts' remain indefinitely detained without any remedy. In addition, the practice of conducting 'proceedings' in closed sessions, hidden from independent international monitors, denies individuals the important safeguard of a public hearing.

11. OHCHR observed 32 violations and abuses against 23 media and civil society activists during the reporting period, with 30 violations that occurred within the reporting period which is a 210 per cent rise in documented attacks compared to the previous reporting period of 16 February to 15 May 2018. OHCHR raises serious concerns regarding the erosion of civic space in the run-up to 2019 elections and encourages law enforcement and local governments to consistently address these attacks by taking steps to protect space for the safe and unhindered exercise of freedoms of expression, opinion and peaceful assembly. Although OHCHR access is limited within armed group-controlled territory, it has documented cases of 'regulations' and action indicating that expression of critical thought and free media are not welcome and are repressed.

12. OHCHR continued to remotely monitor the human rights situation in Crimea from mainland of Ukraine. The Russian Federation continued to apply its laws in violation of international humanitarian law[8] and, in some cases, applied it retroactively to events preceding the occupation. In total, OHCHR documented 47 human rights violations, 25 of which were committed during the reporting period. The Government of the Russian Federation was responsible for 22 violations and the Government of Ukraine was responsible for three violations.

13. As part of its mandate to promote human rights, OHCHR advised the Ministry of Justice of Ukraine on their methodology to monitor and evaluate the National Human

[8] United Nations, General Assembly resolutions referring to Crimea (A/71/205 and A/72/190)

Rights Strategy and related Action Plan. OHCHR referred 30 allegations of human rights violations and abuses to specific duty-bearers.

II. OHCHR methodology

14. OHCHR's quarterly reports are based on information collected by HRMMU through interviews (with victims, witnesses, relatives of victims and lawyers), site visits, meetings with Government representatives, civil society and other interlocutors, and trial monitoring, as well as reviews of court documents, official records, open-source material, and other relevant materials.

15. OHCHR evaluates all sources and information for credibility and reliability, and exercises due diligence to corroborate and crosscheck information from as wide a range of sources as possible. Accounts are also evaluated on their consistency with what is already known about an incident, and with patterns observed in other similar incidents. When documenting human rights cases, the standard of proof applied is that, to an objective observer, there are "reasonable grounds to believe" that a particular human rights violation or abuse occurred, or that a given pattern of violations occurred.

16. OHCHR applies the same due diligence and standard of proof when documenting civilian casualties. In some instances, documentation may take weeks or months before conclusions can be drawn, and therefore numbers on civilian casualties may be revised as additional information becomes available.

17. OHCHR is committed to the protection of its sources and provides for the preservation of their confidentiality. It therefore does not disclose any information that may lead to the identification of sources, unless sources have provided their informed consent. OHCHR also systematically assesses the potential risks of harm and retaliation to its sources. Accordingly, some documented cases are not included or are anonymized.

18. The findings presented in this report are based on data collected by OHCHR through 177 in-depth interviews with victims and witnesses of human rights violations and abuses, as well as site visits in both government-controlled and armed group-controlled territory.[9] OHCHR also carried out 567 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.[10]

III. Impact of hostilities

A. Conduct of hostilities and civilian casualties

We have been forgotten by everybody and nobody cares about us.

- Resident of a village near the contact line

19. During the reporting period, OHCHR recorded 105 conflict-related civilian casualties[11]: 12 killed[12] and 93 injured.[13] This is a 29.6 per cent increase compared with the

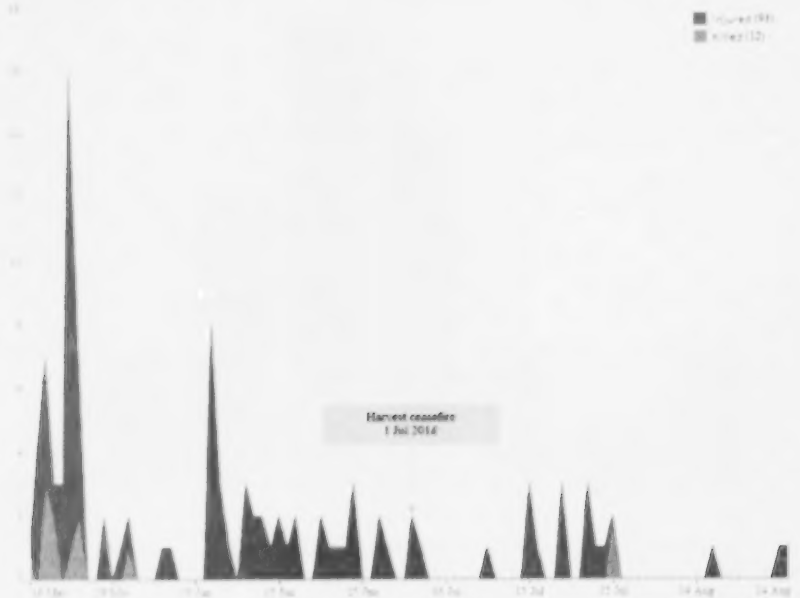
[9] OHCHR has offices in the cities of Kharkiv, Kramatorsk, Kyiv, Mariupol and Odesa (government-controlled territory), and in the cities of Donetsk and Luhansk (armed group-controlled territory). Consequently, the majority of human rights violations and abuses documented by OHCHR occurred in the respective regions, as well as in Crimea.

[10] United Nations Human Rights Council Special Procedures mandate holders, Human Rights Treaty Bodies, and Universal Periodic Review (UPR).

[11] OHCHR documents civilian casualties by consulting a broad range of sources and types of information, which are evaluated for credibility and reliability. In analyzing each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders,

previous reporting period, from 16 February to 15 May 2018 (81 civilian casualties[14]), and a 37.1 per cent decrease compared with the same period of 2017 (167 civilian casualties[15]).

Timeline of civilian casualties, 16 May - 15 August 2018



20. Hostilities were marked by the continued use of indirect and/or explosive weapons which impacted civilian residential areas and essential civilian infrastructure. The "harvest ceasefire", which commenced on 1 July appears to have contributed to a marked decrease in civilian casualties following the significant spike in May and June. In July, three civilian casualties were caused by light weapons and small arms but none by shelling. These numbers represent a substantial decrease from the 32 civilian casualties caused by shelling, light weapons and small arms fire in June. The dramatic drop in civilian casualties caused by shelling demonstrates that adherence to the ceasefire committed to under the Minsk agreements has positive results in protecting the lives and well-being of civilians.

21. OHCHR's monthly recording of civilian casualties shows an erratic trend since the beginning of 2018, with a progressive decrease to the lowest number of civilian casualties recorded since the start of the conflict in April 2014. With a sharp rise in the number of civilian casualties in April and May was due to an alarming upsurge of hostilities. Through

medical professionals and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. Since the beginning of the conflict on 14 April 2014 until 15 August 2018, OHCHR recorded 2,737 civilian deaths (1,571 men, 966 women, 96 boys, 48 girls and 56 adults whose sex is unknown). With the 298 deaths on board Malaysian Airlines MH17 flight on 17 July 2014, the total death toll of the conflict on civilians has been at least 3,035. The number of injured civilians is estimated at 7,000 to 9,000 as of August 2018.

[14] 5 women, 3 men, 3 boys and 1 girl.

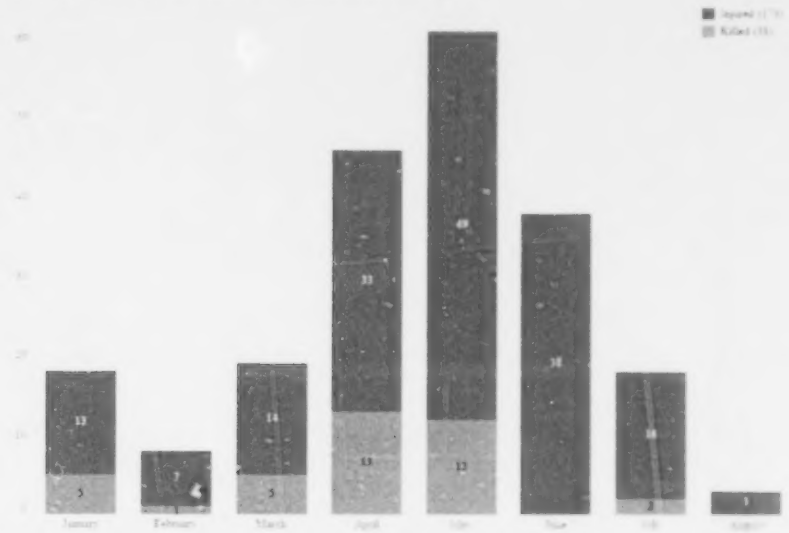
[15] 49 men, 26 women, 9 adults whose sex is not yet known, 8 boys and 1 girl.

[14] 19 killed and 62 injured.

[15] 29 killed and 138 injured.

June and July the number of civilian casualties fell. From the beginning of August to the end of the reporting period, there was a further 66 per cent decrease compared to July.

Civilian casualties per month, 1 January - 15 August 2018



22. The greatest number of civilian casualties during the reporting period – 50.5 per cent of the total – was caused by shelling or light weapons fire: 53 (7 killed and 46 injured); 42 of which (4 killed and 38 injured) were recorded in territory controlled by armed groups and are attributable to the Government, while 11 (3 killed and 8 injured) were recorded in government-controlled territory and are attributable to armed groups.[16] All of the incidents occurred in residential neighbourhoods, including the victims' houses, or other areas regularly frequented by civilians.[17]

23. For example, on 28 May, at approximately 11 a.m., a teenage girl was struck by shrapnel and killed instantly when a shell landed in the yard of her grandparents' home in Zalizne (government-controlled territory, Donetsk region). In another incident, on 7 June, at approximately 10 a.m., a shell landed next to a civilian bus transporting approximately 15 passengers as it entered Holubivske village (armed group-controlled, Luhansk region). Seven people, including the driver, were injured. OHCHR notes that over 1,000 civilians reside in Holubivske,[18] that there were no military objectives located near the site of the incident, and that interlocutors pointed out that there were no members of armed groups in combat function observed in the area at the time.

24. OHCHR recalls that it is a serious violation of international humanitarian law for a party to a conflict to target civilians and civilian infrastructure, or to carry out an indiscriminate attack, and that the parties have an obligation to take all feasible precautions to avoid harm to the civilian population.[19]

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[16] The standard of proof applied by OHCHR is that, to an objective observer, there are reasonable grounds to believe that a particular civilian casualty occurred. OHCHR attributes a civilian casualty to a particular party based on the geographic location where it occurred, the direction of fire, and the overall context surrounding the incident. OHCHR is not able to attribute all civilian casualties to a specific party to the conflict.

[17] Due to the geographic location of the contact line, areas adjacent to it in territory controlled by armed groups are built-up residential and urban areas in many places, whereas areas adjacent to the contact line in territory controlled by the Government are mainly fields and smaller villages.

[18] Based on OHCHR observations. No official numbers were available.

[19] ICRC, Customary International Humanitarian Law Database, Rules 1, 7, 11, 12, 15, 17. Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul. Accessed 5 August 2018.

25. During the reporting period, mine-related incidents[20] accounted for 13.3 percent of all civilian casualties recorded (14: 3 killed and 11 injured).[21] Handling of explosive remnants of war (ERW),[22] mostly hand grenades,[23] accounted for 26.7 per cent of civilian casualties: (28: 1 killed and 27 injured).[24]

26. Small arms fire caused 8 civilian casualties (1 killed and 7 injured) which comprised 7.6 per cent of all civilian casualties recorded.[25]

27. Lastly, road incidents with participation of armed personnel caused two injuries.[26]

■ Causes of civilian casualties

28. Critical civilian infrastructure located in proximity to the contact line continued to come under shelling, light weapons and small arms fire, including homes, but particularly water facilities and schools, and other public infrastructure. Ten incidents of shelling impacting the Donetsk Filtration Station (DFS)[27] and two water pumping stations were documented.[28] In addition, shelling damaged and disrupted operations of wastewater treatment plants on three occasions.[29]

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[20] Incidents in which civilians were killed or injured by mines (antipersonnel or anti-vehicle) or explosive devices triggered in the same way, such as booby traps, or by explosive remnants of war that are inadvertently detonated by unsuspecting civilians.

[21] Two killed and 2 injured in territory controlled by armed groups, and 1 killed and 9 injured in territory controlled by the Government.

[22] ERW include abandoned explosive ordnance (AXO) and unexploded ordnance (UXO). Unlike victims of mine-related incidents, victims of ERW result from handling and/or manipulating an ERW, or being present in immediate proximity to the person handling an ERW. In some instances there was purposeful handling that led to detonation, for example by trying to dismantle the ERW.

[23] For instance, on 21 May, a Ukrainian serviceman on leave injured nine adults by detonating a hand grenade in an interpersonal conflict in the village of Lisna Tarnovytsia (Ivano-Frankivsk region); on 22 May, a boy was killed and two boys and a girl injured when a hand grenade exploded which one of the boys handled while riding a bus in the armed group-controlled town of Debaltseve (Donetsk region); and on 19 July, a boy, his brother and grandmother were injured in the armed group-controlled city of Horlivka (Donetsk region) when a hand grenade exploded while he handled it.

[24] Twelve (1 killed and 11 injured) were recorded in territory controlled by armed groups and 16 (all injured) in government-controlled territory.

[25] Three were injured in territory controlled by armed groups, 1 killed and 3 injured in Government-controlled territory, and 1 injured in "no man's land".

[26] Both in government-controlled territory.

[27] DFS is located in "no man's land" approximately 15 kilometres north of Donetsk city, between the government-controlled Avdiivka and armed group-controlled Yasynuvata. It processes the public water supply for over 345,000 people on both sides of the contact line and has consistently been shelled. *See, e.g.*, OHCHR Report on the Human Rights Situation in Ukraine (hereinafter "OHCHR Report"), 16 November 2017 to 15 February 2018, para. 108.

[28] The third lift pumping station of Siverskyi Donets was shelled on 17 May 2018. The Siverskyi Donets-Donbas (SDD) channel is the main source of water for Donetsk region, with approximately 3.25 million people relying on the pumping station. The first lift pumping station of the South Donbas Water Pipeline came under shelling and small arms fire on 19-20 June 2018. The station supplies raw water (which originally arrives via the SDD channel) to five filter stations, which in turn service 1.17 million people.

[29] WASH incident reports, https://www.humanitarianresponse.info/en/operations/ukraine/documents. In the first half of 2018, the WASH Cluster recorded a total of 57 security incidents affecting water infrastructure in Donetsk and Luhansk regions and noted an increase in the number of incidents involving small arms fire (13 incidents).

29. On 7 June, due to constant shelling during both daylight and night-time hours,[30] OSCE SMM suspended its enhanced presence at DFS, and Voda Donbasa halted all DFS operations for days in order to seek stronger security guarantees from the parties to the conflict. There was only one security incident reported at DFS during the month of July, which may be at least partially due to the "harvest ceasefire" recommitment (see above).

30. From 16 May to 30 June, OHCHR documented seven incidents of shelling of various schools resulting in damages to the facilities.[31] On the morning of 17 May 2018, shells hit the premises of school no. 11 in Svitlodarsk (government-controlled, Donetsk region) while 125 children were attending classes. The school was damaged and one parent who happened to be passing nearby was injured.[32] A boarding school in Dokuchaievsk (armed group-controlled, Donetsk region) was damaged by shelling on 25 June 2018. As a result, the school management and parents cancelled the summer programme and closed the school due to the volatile security situation.

31. A comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities has yet to be established.

B. Situation at the contact line and rights of conflict-affected persons

If I had money and a place to go to, I would have left my house.

- Resident of a village near the contact line

32. The cumulative effects of the armed hostilities, infringements on freedom of movement and the declining socio-economic situation continued to further entrench hardship, particularly for people living in conflict-affected areas along the contact line.[33]

1. Right to restitution and compensation for use or damage of private property

My sister is 75 years old. Now everything is gone, lost or burnt.
She will never see her home like it was before.

- A woman speaking of her sister who fled Chyhari following escalation of

33. An effective restitution and compensation mechanism for over 40,000 private properties destroyed or damaged by the armed conflict has not yet been developed. The lack of such a mechanism contributes to financial hardship, and compounds the health and security challenges stemming from residing in an active conflict area and/or displacement. Additionally, OHCHR is concerned that those people deprived of their property in government and armed group-controlled territory may not have recourse to an effective remedy.

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[30] DFS was shelled repeatedly from 3 to 6 June, damaging the facility and knocking out power lines. This resulted in disrupting the public water supply to certain areas near the contact line. During the first half of 2018, there were 21 security incidents at DFS, causing operations to stop for 17 days. https://www.humanitarianresponse.info/en/operations/ukraine/document/13-wash-cluster-alert-bulletin-01-january-30-june-2018-issue-13.

[31] Education Cluster, https://www.humanitarianresponse.info/en/operations/ukraine/education.

[32] OHCHR interviews, 17, 18 and 22 May 2018.

[33] *See, e.g.*, OHCHR Report, 16 February to 15 May 2018, paras. 31-38; OHCHR Report, 16 August to 15 November 2017, paras. 111-117.

Human rights situation in Chyhari area (located on contact line, Donetsk region)

After the Ukrainian armed forces (UAF) took control of most of Chyhari in mid-May, the area came under increased shelling, and the security, humanitarian and human rights situation significantly deteriorated. Approximately 95 per cent of the 185 residents were displaced. 15 homes were destroyed and 47 damaged, and surrounding areas are contaminated with unexploded ordinances (UXOs). OHCHR also documented allegations of looting.

Residents faced increased risk and insecurity due to the escalation of hostilities. In some incidents of shelling, UAF positions were reportedly located in immediate proximity to civilian houses. In addition, OHCHR was informed of at least nine cases of military use of civilian property. Such actions by the military heighten the risk of civilian casualties and damage to civilian property by exposing them to attack. Under international humanitarian law, it is the duty of each party to the conflict to take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks, which includes avoiding locating military objectives within or near densely populated areas.

According to interlocutors, the Government has not taken steps to ensure restitution or compensation for the affected population. Furthermore, the commissions responsible for assessing the damage and destruction of homes are prohibited from entering the area due to security reasons. This prevents them from issuing certificates of damage, which in turn hinders owners and tenants from being in a position to access remedies when available for damaged or destroyed property.

Displaced residents informed OHCHR that they had not been provided with adequate alternative accommodation. While district authorities made some efforts to provide housing, the conditions of the accommodation cannot be considered as adequate. The UAF are making efforts to facilitate access to the area, however displaced residents cannot return and live in their homes due to the security situation.

Territory controlled by armed groups

34. OHCHR is concerned about expropriation of civilian property by the 'ministry of state security' ('MGB') in territory controlled by 'Donetsk people's republic'. One such case involves the apartment of a family in Donetsk who received it under a State funded programme before the conflict. In January 2015, armed men (believed to be from 'MGB') broke into the apartment and seized personal property, which was followed by threatening phone calls demanding that the family hand over the keys to the apartment. When the family reported these incidents to 'MGB' and 'police' several days later, 'MGB' requested access to the apartment to conduct "special operations" for three days. The keys were returned only after nine months, but according to the family, a number of belongings were missing from the apartment. On 4 March 2018, the apartment was sealed by the 'MGB' and since then the family has not had access to their home. In 2018, the family submitted multiple appeals to the various duty bearers in territory controlled by the armed groups.

35. In May 2018, OHCHR initially started attending the 'civil hearing' on expropriation of the apartment, but in June the 'court' decided to hold 'closed sessions' and ordered OHCHR to leave. No other members of the public were present.[54]

36. OHCHR is concerned that this case may not be isolated. According to one interlocutor, private apartments have been expropriated in a similar manner in Donetsk,

[54] The 'judge' accepted the 'MGB's' argument that the 'trial' must be closed due to the possible disclosure of identities of 'MGB' elements in the course of the hearing. OHCHR monitoring, 21 June 2018.

affecting at least five families. Unless required by imperative military necessity, such expropriations may constitute violations of international humanitarian law, which prohibits the seizure of private property. They may also violate international human rights law which protects the right not to be subjected to arbitrary interference in one's privacy, family or home, and guarantees legal protection against forced eviction.[35]

2. Right to social security and social protection

37. During the first half of the reporting period, the Government continued to terminate high numbers of pension payments. This trend appeared after the Government introduced the procedure in June 2016, requiring residence verification for IDP pensioners. From April to June 2018, the number of internally displaced persons (IDPs) receiving pensions fell by 15 per cent, from approximately 562,000 to 477,000.[36] In July 2018, the Cabinet of Ministers adopted Resolution No. 548 which increased the frequency with which IDP pensioners must undergo personal verification at the state-run bank. Verification must take place every six months rather than annually. OHCHR cautions that requiring pensioners to undergo verification every six months will increase exposure to protection risks, as many must cross the contact line for this administrative procedure.[37] This new requirement further compounds the existing limitation for IDP pensioners, who risk losing their IDP registration and therefore their access to pensions if they stay in armed group-controlled territory uninterruptedly longer than 60 days or 90 days in exceptional circumstances.[38]

38. Additionally, the Resolution introduced some positive changes. It expanded the provision of targeted financial assistance to include children born after the start of the conflict, and it doubled the length of time for IDPs to receive targeted financial assistance if they are at-risk of unemployment. It also exempted IDP pensioners with disabilities from physical verification at the bank.[39]

39. In a positive development, on 4 July 2018, the Kyiv appellate administrative court found that the residence verification requirements for IDPs introduced by Cabinet of Ministers Resolutions No. 365 and No. 637 contradicted Ukrainian legislation as they limited access to pensions and social security and resulted in discrimination against IDPs compared to other Ukrainian pensioners.[40] The Ministry of Social Policy announced it was developing a new mechanism for provision of social payments to IDPs in line with the court decision.[41] Pending the establishment of the new system, the execution of the court's judgment has not yet been implemented, in particular in regards to residence verification for determining IDPs' pensions and social benefits.[42]

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[35] Customary International Humanitarian Law Database, Rule 50; Committee on Economic, Social and Cultural Rights, general comments 4 and 7.

[36] Pension Fund, available from https://bit.ly/2Kqa1Sb. OHCHR notes that on 3 May 2018, the Supreme Court ruled that the termination of pension payments to an IDP under Cabinet of Ministers resolution no. 365 was an unlawful interference to the right to property. *See* OHCHR Report, 16 February to 15 May 2018, para. 42.

[37] *See* OHCHR Report, 16 February – 15 May 2017, paras. 8, 99, and 123. Prior to the Resolution, just after 12 months from initial registration, an IDP would only have to register once a year.

[38] Article 12(1.8) of the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' no.1706-VII of 20 October 2014.

[39] Resolution No. 548 exempts from 'Oshchadbank' physical verification of IDP pensioners that qualify within the classification of disability group I and those who require constant external assistance.

[40] Judgment available from http://reyestr.court.gov.ua/Review/75172804.

[41] Ukrainian-Helsinki Human Rights Union, https://helsmki.org.ua/articles/sotsvyplaty-dlya-vpo-bez-perevirok-minsotspolityky-rozroblyaje-proekt-neobhidnoji-postanovy/. Since the Government considers pensions as a social payment, it may be assumed that the new mechanism would regulate the provision of pensions as well.

[42] The Appellate Court's decision entered into force despite its cassation review, rendering inactive the provisions of the resolutions concerning the residence verification procedures. Thus, the authorities can no longer conduct residence verification of IDPs and IDP pension payments cannot be suspended

3. Freedom of movement, isolated communities and access to basic services

40. Despite impediments on the freedom of movement, large numbers of people continued to travel over the contact line, with 1,142,300 crossings recorded in May, 1,189,300 in June, and 1,289,100 in July.[43] Compared to the prior reporting period, the daily average of crossings over the reporting period increased by 5,000 to a daily average of nearly 39,000.[44] This increase is considered related to pensioners travelling to government controlled territory to receive their pensions which had been previously suspended.[45]

41. These numbers indicate that despite many risks, the conflict-affected population and IDPs residing in armed group-controlled areas undertake an arduous journey to reach government-controlled territory to access assistance, as well as their pensions. OHCHR remains concerned that individuals crossing the contact line, who consist predominantly of elderly and people with medical issues, are exposed to higher risks of death due to health conditions and insecurity.[46]

42. During the reporting period, people crossing the contact line were exposed to high summer temperatures without access to adequate sanitation or medical facilities. According to the Main Department of the State Emergency Services of Ukraine (SES) in Luhansk region, up to 100 people experienced health incidents each day during the reporting period at the Stanytsia Luhanska entry-exit check point (EECP) on government-controlled territory. The conditions at Stanytsia Luhanska – the only official crossing route in Luhansk region – are particularly concerning. Open only to pedestrians, this route requires individuals who wish to cross the contact line in either direction to spend several hours standing in queues.[47] At least six individuals (five men and one woman) died while crossing the EECPs.[48]

43. The Ministry of Defence has elaborated a draft Resolution to regulate the procedure for movement of persons and goods across the contact line.[49] OHCHR notes, that it contains elements which should address some of the hardship faced by civilians crossing the contact line. In particular, it identifies the Donetsk and Luhansk Military-Civil Administrations as the bodies responsible for the maintenance of the respective EECPs; it

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on these grounds. However, the question of how to reinstate payments for IDPs whose pensions had already been suspended on these grounds prior to their cancellation by the court is more problematic.

[43] The official statistics are provided by the State Border Guard Service of Ukraine.

[44] During the summer months of June and July 2017, the total daily number of people crossing EECPs ranged from 30,000 to 40,000, with an average mean of over 34,000. Available from https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/crossing_the_line_of_contact_.pdf. Compared to May, June and July 2018, the daily range was between 36,000 to 41,500, an average mean of 39,000.

[45] The sharp increase can only partly be explained with the usual increase during the summer months, but noteworthy is the daily average calculated in this period compared with the same reporting period in 2017 has increased by 4,000 crossings per day.

[46] A monthly survey at the checkpoints shows that more than half of the people crossing the checkpoints are over the age of 60, due to the requirement that pensioners living in armed group-controlled territory register as IDPs in government-controlled territory in order to continue receiving their pensions. *See, e.g.*, Right to Protection, Crossing the Line of Contact, May 2018. Available from: https://bit.ly/2OHZq8v.

[47] SES in Luhansk region has informed OHCHR that 8,847 people (including 414 children and 1,162 persons with disabilities) sought medical attention from 1 May to 1 August, which was an increase from the previous months. OHCHR could not obtain comprehensive statistics regarding medical assistance sought on the side of the crossing route controlled by armed groups.

[48] A 77-year-old woman died on 17 May 2018, a 71-year-old man on 30 May 2018 (immediately after crossing), and a 79-year-old man on 19 July 2018. On 27 June 2018, a 79-year-old man died from a heart attack while queuing to cross the Maiorske checkpoint. On 11 August 2018, two men in their sixties died while attempting to cross the contact line, one man fell ill while crossing the Marinka EECP by bus and died shortly after disembarking, and the other died while queueing at the Marinka EECP.

[49] *See* OHCHR Report, 16 February to 15 May 2018, paras. 28-29.

allows the crossing to government-controlled territory of children born after 2014 with documents confirming the fact of birth issued in territory controlled by armed groups; and it revises the approach in regulating goods which cross the contact line.[50] OHCHR has consistently advocated for these changes and submitted, jointly with the Protection Cluster partners, comments and suggestions to the Government on the draft resolution which is yet to be finalized.

IV. Right to physical integrity

44. OHCHR documented 63 human rights violations and abuses involving unlawful or arbitrary detention, torture, ill-treatment, sexual violence and/or threats to physical integrity, committed on both sides of the contact line. Out of these, 13 violations and abuses

I do not believe in the law's protection of an ordinary person, a civilian, anymore. They simply beat you up and you have no choice but to say that you are guilty. It can happen to anyone…

- A conflict-related detainee

occurred within the reporting period, which affected eight victims (seven men and one woman). The Government of Ukraine was responsible for ten violations, and armed groups for three. OHCHR recalls that the Government of Ukraine bears primary responsibility to investigate and prosecute human rights violations perpetrated in its territory.[51] Failure to bring perpetrators of such violations to justice could "itself give rise to a separate breach of the Covenant".[52]

A. Access to detainees and places of detention

45. In government-controlled territory, OHCHR continued to enjoy access to official places of detention and the ability to conduct confidential interviews of detainees in line with international standards. However, as of March 2018, Kharkiv pre-trial detention facility (SIZO) № 27 denied OHCHR access to information about conflict-related detainees held there, and thus prevented OHCHR from accessing them.[53] During the reporting period, OHCHR interviewed 64 conflict-related detainees (56 men and 8 women) in pre-trial detention facilities in Mariupol, Zaporizhzhia, Bakhmut, Starobilsk, Kharkiv, Kherson and Odesa and in penal colonies in Kharkiv and Kherson.

46. In territory controlled by armed groups, OHCHR continued to be denied confidential access to detainees and to places of deprivation of liberty, despite repeated requests. This prevents OHCHR from fully documenting the human rights situation and raises serious concerns about the conditions of detention and treatment of detainees. These concerns were confirmed by first-hand information from former detainees describing how individuals in camouflage and masks would search cells and beat detainees in Luhansk SIZO and the penal colony in Khrustalnyi (formerly Krasnyi Luch) between 2016 and April 2018.[54]

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[50] The draft Resolution authorizes the Ministry of Temporary Occupied Territories and Internal Displaced Persons to develop a list of goods that are prohibited for transfer to/from armed group controlled territory, which would replace the exhaustive list of goods allowed to be transferred.

[51] International Covenant on Civil and Political Rights, art. 2.

[52] Human Rights Committee, General Comment No. 31 [80] The Nature of General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, para. 18.

[53] After the close of the reporting period, following OHCHR's complaints, the North-Eastern Inter-Regional Penitentiary committed to ensuring that all relevant information about conflict-related detainees would be made available to OHCHR. On 5 September 2018 Kharkiv SIZO sent the list regarding conflict related detainees, who were admitted in August 2018.

[54] OHCHR interviews, 8 and 18 June 2018. *See* OHCHR Report, 16 August to 15 November 2017, para. 66.

B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment

> ***For more than a month I had no idea where my son was. We couldn't find any information on his whereabouts. We feared the worst, thinking he might be dead. We were so scared because we knew that this war made many people disappear and never come back.***
>
> - Mother of conflict-related detainee held *incommunicado*

47. In government-controlled territory, OHCHR continued documenting cases of unregistered detention, with individuals detained on conflict-related charges held incommunicado before their arrests were formalized. For example, on 20 June 2018, a resident of Khartsyzk was held for nearly 35 hours in the Bakhmut and Kramatorsk police departments without being officially arrested or charged and without access to a lawyer. During this time, people in military uniforms reportedly punched him, beat him with objects and threatened him with a knife, demanding that he "writes the truth". He was interrogated and pressured to agree to a plea bargain and was charged with participation in an armed group.[55] OHCHR also documented six cases where presumed or actual members of armed groups were captured by UAF or the Security Service of Ukraine (SBU) and held in unofficial detention facilities before their arrests were properly registered.[56] Four detainees involved in these cases described being tortured, ill-treated, subjected to sexual violence and/or threatened with further physical violence.

48. OHCHR documented a new case of arbitrary detention and ill-treatment allegedly carried out in an unofficial detention facility located at the Krasnoarmiisk ATP (automobile transportation company).[57] On 16 June 2018, armed men wearing military uniforms and masks stormed into a house where a Russian citizen (previously detained and released on 18 May 2018) was staying. They told him he was going to be "exchanged" to the Russian Federation, blindfolded him and transferred him to the Krasnoarmiisk ATP where he reportedly spent two days handcuffed to an iron bed. On 18 June, SBU officers presented him with two options: either to return to detention in the SIZO or "disappear". He was brought to court for a hearing, during which he agreed, out of fear, to be remanded back into custody.[58]

49. OHCHR is concerned about the lack of effective investigation into conflict-related human rights violations, such as arbitrary detention, torture and ill-treatment in government-controlled territory. It observed that investigations are inefficient, with no practical steps taken to investigate allegations of torture and ill-treatment. For example, in one case, a detainee submitted several complaints alleging an eight-day unregistered detention and ill-treatment at Krasnoarmiisk ATP in March 2015.[59] The Military Prosecutor's Office of Donetsk garrison initiated criminal proceedings upon his complaints but closed the investigation twice.[60] Even though the court ordered the investigation to be

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[55] Criminal Code of Ukraine, Article 260; OHCHR interview, 23 June 2018.

[56] During the reporting period, OHCHR documented cases indicating the same pattern of arbitrary detention it previously documented. *See* OHCHR Report, 16 May to 15 August 2017, para. 44. OHCHR interviews, 31 May, 18 June, 4 July, and 15 August 2018.

[57] The premises of the former Automobile Transportation Company No. 11411 in Pokrovsk (formerly Krasnoarmiisk), commonly known as "Krasnoarmiisk ATP", has been reportedly used by SBU since 2014. OHCHR previously documented several allegations by conflict-related detainees of *incommunicado* detention and torture there in 2014 and 2015 prior to their official arrest by SBU.

[58] OHCHR interview, 15 August 2018.

[59] *See* OHCHR Report, 16 November to 15 February 2017, para. 43.

[60] Criminal proceedings were initiated under article 365(2) of the Criminal Code of Ukraine (abuse of powers or official authority by an officer of the law enforcement agency). In 2016, the investigation into the complaints of ill-treatment was closed by the prosecutor due to absence of the event of a crime, however the Krasnoarmiiskyi town-district court quashed the prosecutor's decision. Ruling available from http://reyestr.court.gov.ua/Review/57418746. In 2017, the prosecutor closed the

reopened both times, there was no progress and, following the simultaneous release of the detainee on 27 December 2017,[61] the investigation was reportedly closed again.[62]

50. OHCHR is also concerned about a lack of accountability for incommunicado detention, torture and ill-treatment, including in the premises of Kharkiv SBU.[63] A number of former incommunicado detainees were not charged with any crimes, while they were held in unofficial places of detention, and subjected to prosecution after their release. For instance, in 2018, one of the former detainees, despite spending nearly two years held incommunicado and released without formal charges, faced prosecution for alleged membership in the armed groups back in 2014.[64]

Territory controlled by armed groups

51. In territory controlled by 'Luhansk people's republic', armed groups continued the practice of 30-day 'preventive arrest', during which victims are held incommunicado, not allowed to see lawyers, and relatives have no information on their whereabouts. Such practice, which may amount to enforced disappearance, raises serious concern about the treatment of detainees and the conditions of detention. During the reporting period, OHCHR received information about two people detained from 30 to 64 days under 'preventive arrest' by the 'ministry of the interior' and 'MGB'.[65]

52. In one case, a man was detained by 'MGB' on 28 March 2018 while crossing the Stanytsia Luhanska EECP. His mother sought information from the 'general prosecutor' and 'MGB', but was not informed until 19 April that her son was detained under 'preventive arrest'. During the first two days of detention, the man was reportedly severely beaten, forced to stand on his toes while his wrists were handcuffed to the ceiling, and subjected to electroshocks whilst tied to a table. The beatings stopped when being unable to take the torture any more, he 'agreed' with the 'accusations'. He was released after 64 days of detention.[66]

53. Similarly, in territory controlled by 'Donetsk people's republic', individuals continued to be detained under 30-day 'administrative arrest', during which time they are not allowed to communicate with their relatives or lawyers.[67] Sometimes, even confirmation of the detention itself is withheld from the families of detainees, increasing their suffering. For example, in October 2017, around 10 armed individuals wearing balaclavas abducted a man at his parent's house. For 30 days, the man's parents had no information on his whereabouts or fate, despite numerous requests and visits to the 'MGB' office. They would often stand for hours on the street outside 'MGB' and "wait like dogs" in the hope that someone might tell them what happened to their son.

54. OHCHR continued to receive and corroborate information on individuals detained in Izoliatsiia at 3, Svitloho Shliakhu street in Donetsk.[68] OHCHR documented several cases of

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investigation on the same grounds, and the court again quashed the decision. Ruling available from http://reyestr.court.gov.ua/Review/64996006.

[61] *See* OHCHR Report, 16 November 2017 to 15 February 2018, Annex II.

[62] After being released, the detainee informed OHCHR he intended to return to government-controlled territory to seek justice for the arbitrary detention and torture he had suffered. However, in January 2018, he was detained *incommunicado* by 'MGB' in Donetsk and subsequently 'banned' from leaving territory controlled by 'Donetsk people's republic'. Representatives of the Military Prosecutor's Office told OHCHR that they were unwilling to investigate the complaints of conflict-related detainees regarding unregistered detention and torture in Krasnoarmiisk ATP and other unofficial places of detention which allegedly occurred prior to official arrest. OHCHR meeting, 11 July 2018.

[63] *See* OHCHR Report, 16 August to 15 November 2017, para.70.

[64] OHCHR interview, 11 June 2018.

[65] For information about 'preventive arrest', *see* OHCHR Report, 16 February to 15 May 2018, para. 51. OHCHR interviews 7 June 2018, and 6 July 2018.

[66] OHCHR interview, 7 June 2018.

[67] *See, e.g.*, OHCHR Report 16 February to 15 May 2017, paras. 43-44; OHCHR Report, 16 August to 15 November 2017, paras. 40-44; OHCHR Report, 16 November 2017 to 15 February 2018, para. 33.

[68] Before the conflict, Izoliatsiia was an industrial facility which was turned into a cultural centre. In May 2014, it was seized by armed groups and used as a detention facility. OHCHR has previously

individuals arbitrarily arrested by 'MGB' of 'Donetsk people's republic' and held incommunicado in Izoliatsiia under 'administrative arrest' in the first half of 2018.[69] During that time, they were tortured, including by electrocution. Based on interviews with credible sources, OHCHR was able to confirm that at least 40 individuals, including civilians, were being held in Izoliatsiia in the first half of 2018.[70]

55. OHCHR continued to document cases of individuals who disappeared since 2014 and whose whereabouts remain unknown. For example, OHCHR documented the case of a man from Vuhledar and his son who, on 12 June 2015, were abducted by unknown armed people while driving in Donetsk region. They were reportedly held in an unknown location where they were tortured and ill-treated. After a few days, the son was released but the whereabouts and fate of the father remain unknown.[71]

C. Situation of pre-conflict prisoners

56. OHCHR continued monitoring the situation of pre-conflict prisoners who were convicted prior to the outbreak of the conflict and remain in custody in territory controlled by armed groups. OHCHR is aware of at least 184 such prisoners who have requested to be transferred to government-controlled territory. However, no progress was made during the reporting period towards their transfer to government-controlled territory.

57. In territory controlled by 'Luhansk people's republic', some pre-conflict detainees remained detained despite having spent the amount of time in detention equal to the sentences imposed by the judgments of courts of first instance.[72] On 3 April 2018, the 'people's council' amended the 'criminal procedure code' to allow prisoners who had already spent the amount of time in detention equal to their sentences to request to be released with the personal undertaking not to leave territory controlled by the 'republic'. OHCHR is aware of three individuals who have since been released. However, the restriction on their freedom of movement is of concern especially for those whose family resides in government-controlled territory.

58. Another concern is that pre-conflict detainees released in armed group-controlled territory do not always have valid passports or identification documents, which severely restricts their freedom of movement and places them at risk of further 'arrest'. In one case, a man released in June 2016[73] who lacked identification documents tried unsuccessfully to cross the contact line into government-controlled territory three times. During one attempt, he was arbitrarily detained on the armed group-controlled side and held incommunicado for approximately a week, during which he was beaten and subjected to electroshocks.[74] During the reporting period, he was frequently 'arrested' by 'police' due to absence of identification documents, and once held in solitary confinement for two days.[75]

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documented and reported on various human rights violations, including torture, perpetrated at Izoliatsiia. *See* OHCHR Report, 16 August to 15 November 2017, para 54; OHCHR Report, 16 November 2017 to 15 February 2018, para. 67.

[69] OHCHR interviews, 17 May and 22 June 2018.

[70] Ibid.

[71] OHCHR interview, 15 June 2018.

[72] Due to the outbreak of the conflict, appeals submitted in early 2014 never reached courts in government-controlled territory. Meanwhile 'appeals', including from pre-conflict prisoners, submitted to the 'court of appeal' of 'Luhansk people's republic' have not been reviewed as the 'court' has not been established, and neither have their verdicts entered into force, leaving the 'appellants' in a legal limbo.

[73] The man was remanded into custody in 2012 and held in Luhansk SIZO, however the pre-trial investigation was not completed before 2014. In June 2016, a 'court' heard his case, issued a suspended 'sentence' and released him.

[74] He was accused of attempting to transfer information to government-controlled territory.

[75] OHCHR interview, 18 June 2018.

D. Missing persons

I know that my son is dead. I just want to know where his remains are. Give me back what remained of my child. Not knowing anything about your son for three years is torture.

- Mother of missing person abducted by members of armed groups

59. OHCHR welcomes Parliament's adoption of the law on missing persons,[76] which aims at addressing the situation of individuals who are unaccounted for as a result of armed conflict, armed hostilities, public disturbances and natural or man-made disasters. The law provides for the establishment of a unified register of missing persons and of the Commission on Missing Persons, which will coordinate activities of various governmental institutions involved in the tracing and identification of missing persons and providing support to their families. In line with the Convention for the Protection of All Persons from Enforced Disappearance[77] and advocacy by OHCHR and other actors,[78] the law criminalizes enforced disappearance under national legislation[79] and introduces certain social guarantees to respond to the financial needs of relatives of missing persons.[80]

V. Administration of justice

60. In government-controlled territory, OHCHR continued monitoring the prosecution of conflict-related criminal cases and, in that context, documented persistent violations of fair trial rights, including procedural safeguards and judicial guarantees. OHCHR is concerned, in particular, about the manner in which plea bargains and in absentia prosecutions are used, as well as about arbitrary application of provisions exempting members of armed groups from criminal responsibility, attacks and intimidation of defence lawyers by extreme right wing groups, and continuing interference with the independence of judges.

A. Fair trial rights

61. Over the reporting period, Ukrainian courts issued 72 verdicts in criminal cases related to the armed conflict in eastern Ukraine.[81] Forty-four of these were based on plea bargain agreements. In 18 of these cases, no evidence has been entered into the case file. While the criminal procedure legislation prohibits guilty verdicts that are based solely on confessions, use of plea bargains allows the prosecution to circumvent this safeguard. Once a plea bargain has been submitted the court discontinues examination of the case regardless of the stage of the proceedings. It is concerning that defendants may have entered plea bargains under duress, as was documented by OHCHR in a number of cases.[82]

62. In addition, OHCHR notes the vulnerability of individuals who lack identification documents due to the armed conflict. For example, on 1 August, Markivskyi district court

[76] Law of Ukraine 'On the legal status of missing persons' (draft no. 5435), 12 July 2018. The law entered into force on 2 August 2018.

[77] Ukraine acceded to the Convention for the Protection of All Persons from Enforced Disappearance in August 2015.

[78] *See* OHCHR Report, 16 November 2017 to 15 February 2018, paras. 137-138; OHCHR Report, 16 November 2016 to 15 February 2017, paras.150-152.

[79] Criminal Code of Ukraine, Article 146-1.

[80] Article 6 of the Law 'On the legal status of missing persons' proclaims family members of missing persons eligible for the survivors pension benefit.

[81] These include charges of crimes against national security of Ukraine and crimes against public safety. Statistics from the Unified Register of Court Decisions.

[82] OHCHR interview, 11 June 2018; OHCHR trial monitoring 23 June 2018.

of Luhansk region sentenced a man[83] to six years in prison on charges of membership in the armed groups based on a plea bargain.[84] Due to the lack of any ID he had been arrested a number of times on both sides of the contact line. Starting from 24 June, he was subject to repeated interrogations in the absence of a lawyer. The state-provided lawyer was not present during his arraignment hearing, and only later did the lawyer participate via video conference when the plea bargain was presented during his hearing on 1 August.

63. Fifteen guilty verdicts were issued in absentia during the reporting period. OHCHR notes that in absentia proceedings, which were introduced to the Criminal Procedure Code in 2014, are not in line with international human rights standards. According to the latter, in absentia proceedings should be preceded by proper notification of the accused[85] and should provide the opportunity for a full retrial after the authorities locate the person.[86] Neither of these requirements are provided for in the Criminal Procedure Code. Lack of retrial opportunities negatively impacts the rights of the defendants.

64. Some procedural guarantees are not extended to former members of the armed groups who surrendered to Ukrainian law enforcement in exchange for being exempted from criminal responsibility. Due to ambiguities in the Criminal Procedure Code, these individuals are often not immediately provided with a lawyer, or their testimony, which is critical for their exemption from criminal responsibility, may not be properly recorded. While the courts are empowered to exempt an individual from criminal responsibility, they cannot raise this matter proprio motu and are dependent on the prosecutor to request it. The individuals are thus left at the discretion of the prosecutor.

65. During the reporting period, OHCHR documented three incidents where extreme right-wing groups attacked or attempted to intimidate defence lawyers. On 28 July 2018, a group of C14 members verbally attacked and attempted to head-butt a defence lawyer they accused of being a separatist for representing conflict-related defendants. This occurred on court premises in the presence of police who failed to react properly.[87] Three days later, about 50 members of C14 entered the premises of the National Bar Association and aggressively demanded the revocation of the lawyer's licence and prevented the committee of protection of lawyers' rights from holding its session. On 7 August 2018, three members of C14 physically abused another lawyer after he commented on their behaviour in the courtroom. Again the police were present but did not intervene. OHCHR recalls that the lawyers should not be identified with their clients, and that the authorities shall ensure the safety and security of court premises to protect the legal professionals in the exercise of their work.

66. OHCHR continued to document interference with the independence of the judiciary by prosecutors who opened criminal investigations against judges in relation to their duties.[88] For example, following a judicial decision to close a criminal case against Kharkiv mayor Hennadii Kernes and two of his bodyguards after none of the 19 prosecutors attended seven consecutive hearings from 2-10 August,[89] the Prosecutor General publicly

[83] A pre-conflict detainee held in Sverdlovsk SIZO from 2012 to 2016, was released without any documents after being 'sentenced' by the 'Luhansk people's republic' 'court' to four years of deprivation of liberty.

[84] OHCHR trial monitoring, 1 August 2018. The verdict is available from http://reyestr.court.gov.ua/Review/75650045#.

[85] *See, e.g., Daniel Monguya Mbenge* v. Zaire (Communication No. 16/1977, 1990) whereby the United Nations Human Rights Committee concluded that mere publishing of information about a trial in the media is not sufficient to satisfy the due notification requirement, enshrined in article14 of the International Covenant on Civil and Political Rights.

[86] *See, e.g., Colozza v. Italy*, where the European Court of Human Rights concluded that *in absentia* trials are only permissible if retrial is available after the authorities get a hold of person.

[87] C14 posted video of the incident on Facebook, available from https://www.facebook.com/c14.news.reserve/videos/2170974958077O6/.

[88] OHCHR is concerned that launching an investigation into allegations of delivery of an unjust decision may be used to exert pressure on judges over long periods of time while they are under such pending investigations. *See* OHCHR report, 16 February – 15 May 2018, paras. 60-62.

[89] The case related to charges of abduction and ill-treatment of protesters during the Maidan events.

stated that the judge would have to be "brought to account" for his "unjust" decision.[90] The next day, the prosecutor opened an investigation against the judge on charges of delivering a "deliberately unjust decision"[91]. In another example, the prosecutor's office opened a criminal investigation against the judges of Marinskyi district court of Donetsk region on the same charges after the court replaced detention with house arrest for a suspect charged with affiliation with armed groups of 'Donetsk people's republic'.[92]

B. Accountability for cases of violence related to riots and public disturbances

67. OHCHR noted some limited progress in legal proceedings concerning the 2014 Maidan protests and the violent events of 2 May 2014 in Odesa.

1. Accountability for the killings of protesters during the Maidan protests

68. On 11 July 2018, the Prosecutor General implemented a reform measure which reorganized his Office with a view to delimiting structural units dealing with pre-trial investigation and procedural oversight. The Special Investigative Department (SID) dealing inter alia with Maidan-related proceedings, was left with only investigative functions, transferring the procedural oversight to another structural unit. OHCHR will continue following the developments to see how this restructuring of the Office of the Prosecutor General will impact investigative and prosecutorial work carried out on the Maidan cases.

69. On a positive note, OHCHR welcomes progress in the investigation of the killing of two protesters on 19 February 2014, near the SBU office in Khmelnytskyi.[93] Despite the loss of key evidence[94] and legal challenges to the investigation by SBU,[95] on 21 June 2018, SID charged a member of the Khmelnytskyi regional special SBU unit with negligent homicide, infliction of grievous bodily injury, negligent grievous bodily injury, and abuse of authority or office.

70. In another development, on 13 June 2018, the Kyiv city court of appeal overruled[96] the heavily-criticized trial verdict against one of the "titushky"[97] leaders convicted of hooliganism during the Maidan events on 18-19 February 2014 which resulted in the killing of journalist Viacheslav Veremii.[98] The appeal court overturned the trial court's suspended

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[90] https://bit.ly/2MkI8AP

[91] Article 375 of the Criminal Code of Ukraine.

[92] OHCHR trial monitoring, 13 August 2018. A case against judges was initiated under Article 375 of the Criminal Code of Ukraine ("delivery of a deliberately unjust decision").

[93] *See* press release of the Prosecutor General's Office, 22 June 2018, available from https://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=231799, and OHCHR thematic report on accountability for killings in Ukraine from January 2014 to May 2016, footnote 107.

[94] The Military Prosecutor's Office of Western Region which conducted the pre-trial investigation lost the only intact bullet case recovered from the crime scene.

[95] SBU challenged the court ruling granting the prosecution temporary access and permission to forfeit weapons from the Khmelnytskyi SBU armoury, however the appeal was dismissed on 13 November 2017. Court decision available from http://reyestr.court.gov.ua/Review/70389287#. In addition, the SBU confirmed that the date when the Prosecutor General's Office summoned the SBU officer for interrogation as a suspect, coincided with the date when Khmelnytskyi SBU decided to deploy him to the Joint Forces Operation area in eastern Ukraine, making it more difficult for the investigation to reach him. Upon the request of the Prosecutor General's Office the SBU conducted investigation into possible assistance of the senior officials of the Khmelnytskyi SBU to the suspect to evade participation in the criminal case, and denied these allegations.

[96] Verdict available from http://reyestr.court.gov.ua/Review/74688253.

[97] "Titushky" were athletically-built men engaged by law enforcement to attack protestors and create a situation of violence that would then justify subsequent dispersal of undesired protests.

[98] *See* OHCHR Report, 16 November 2017 to 15 February 2018, footnote 68.

sentence of four years[99] with five years of immediate imprisonment, citing that the trial court wrongfully considered the 'sincere repentance' of the accused and aptitude for rehabilitation as mitigating measures to justify the lenient sentence.

71. Related to the same case, the family of Viacheslav Veremii successfully petitioned the court to void the prosecutor's decision taken in 2014 to close the parallel murder investigation against the 'titushky' leader's involvement in the death of their son.[100] Thus, the current prosecutor[101] will now have the opportunity to fully investigate the defendant's specific role and responsibility in the killing.

2. Accountability for the 2 May 2014 violence in Odesa

72. OHCHR noted some limited progress in the investigations and legal proceedings connected to the violent events of 2 May 2014 in Odesa which led to the death of 48 people,[102] with no one yet held accountable for any of these acts.

73. The investigation into the fire at the House of Trade Unions in which 42 people died remains ongoing. Meanwhile, the trial against three fire brigade officials for negligence has stagnated, with no hearings on the merits having taken place since November 2017.

74. On 30 May 2018, an indictment against the former heads of the Odesa city Police Department, the Patrol Service Department and the city Public Security Department of the Ministry of Interior for "abuse of authority or office" was submitted to the Prymorskyi district court of Odesa.[103] Two of the accused are additionally charged with "leaving in danger" the 42 individuals who consequently died in the House of Trade Unions.[104]

75. The trial against the former head of the Odesa regional Police on charges of "abuse of authority or office", "forgery in office" and "leaving in danger" continued,[105] although only three hearings took place during the reporting period.

76. Long-awaited progress was finally seen in the legal proceedings against the only 'pro-unity' activist charged in connection with the 2 May 2014 events. The accused was indicted in April 2015 for the fatal shooting of a civilian in the city centre and the attempted killing of a police officer.[106] On 3 May 2018, after almost a one-year delay, the Prosecutor General's Office sent the indictment for corrections to the Odesa Investigation Department of the National Police and Odesa prosecutor's office. The latter resubmitted the amended indictment to the court on 8 June 2018.[107]

77. No progress was achieved in the appeal proceedings against the acquittal of 19 individuals accused of mass disturbances in the Odesa city centre, which resulted in the

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[99] On 22 December 2017, Shevchenkivskyi district court of Kyiv issued a four-year suspended sentence with a two-year probation period, which would have the likely result of the defendant not having to serve any time. *See* OHCHR Report, 16 November 2017 to 15 February 2018, para. 52.

[100] On 7 May 2018, the Pecherskyi district court of Kyiv annulled the prosecutor's decision of 1 August 2014 to close the investigation into the killing against the 'titushky' gang leader. Decision available from http://reyestr.court.gov.ua/Review/74054794.

[101] The previous prosecutor who closed the investigation into the intentional killing in 2014 left the office shortly thereafter.

[102] According to the Odesa Prosecutor's office, investigations into the 2 May 2014 violence were divided into 13 criminal proceedings against 43 individuals. Two individuals have been convicted, indictments have been submitted against 27 individuals (21 are free pending trial, two are detained under other charges, and one passed away), and 14 suspects are on the wanted list. OHCHR meeting, 10 July 2018.

[103] Criminal Code of Ukraine, Article 135.2.

[104] Ibid. Article 135.3. "leaving in danger" consists of wilfully abandoning a person without help who is in a life-threatening condition and unable to ensure his/her self-preservation, where the perpetrator was obliged and able to provide help.

[105] Ibid. Articles 364.2, 366.2 and 135.2.

[106] The case was transferred from the Prosecutor's Office of Odesa region to the Prosecutor General's Office on 25 May 2017.

[107] According to the Prosecutor's Office (letter from 7 August 2018).

killing of six men.[108] Only three court hearings were scheduled (on 11 June, 23 July and 6 August 2018) but all were adjourned due to the failure of some parties to appear.

C. Territory controlled by armed groups

78. Parallel structures of administration of justice continued operating in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'. Reportedly, in territory controlled by 'Donetsk people's republic', thousands of cases have been processed by 'courts'.[109] In territory controlled by 'Luhansk people's republic', individuals face a structure that does not provide access to remedy and are therefore at risk of indefinite detention.[110] Namely, while the 'code' regulating 'criminal procedures' provides an opportunity to appeal to a 'supreme court', there is no such structure, or any other review body.[111] As a result, 'sentences' that are 'appealed' do not enter into force, defendants cannot start serving their prison terms and therefore remain in indefinite detention without any remedy.[112]

79. Individuals 'accused of' affiliation or links with the Ukrainian military or SBU are 'tried' in closed sessions in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.[113] This raises concern that those 'prosecuted' are deprived of the essential judicial guarantee of publicity of hearings that would "ensure the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large".[114]

80. OHCHR also remains concerned that lawyers assigned to represent conflict-related detainees are performing their defence functions on a pro-forma basis.[115] Providing a lawyer appears to be done with a view to legitimizing the 'convictions'. These concerns are further heightened by impediments imposed by 'Donetsk people's republic' and 'Luhansk people's republic' for private lawyers hired to engage in the proceedings, e.g., impediments in accessing their clients and information about them.[116]

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[108] *See* OHCHR Report, 16 August to 15 November 2017, para. 89.

[109] As of 9 August 2018, the 'supreme court' reported that since 1 January 2018, it had been 'considering' 4,054 'cases': 1,380 were 'criminal' cases, 1,801 were 'civil', 77 related to 'administrative offences', and 796 were 'commercial cases'. The 'court' reportedly delivered final 'judgments' in 84 per cent of these 'cases'. Statistics are available from https://supcourt-dnr.su/stat/operativnaya-statisticheskaya-informaciya-o-rabote-verhovnogo-suda-sudov-obshchey-21.

[110] In March 2014, two pre-conflict-detainees were convicted to four years in prison; in April 2014, the verdict was appealed by the prosecution. The appeal, however, was not heard before the outbreak of the conflict, and both individuals remained in detention until 18 May 2018, having been held in prison longer than they should have served, when the first-instance 'court' released them on undertaking not to leave, since their case had not been closed.

[111] On 16 August 2018, 'acting head' of 'Luhansk people's republic' issued a 'decree' ordering to proceed with the establishment of the 'supreme court' of 'Luhansk people's republic'. On 28 August 2018, 'people's council' appointed 14 'judges' of the 'supreme court'.

[112] For example, an individual 'arrested' by the armed groups in 2015 on suspicion of arson, and later additionally 'charged' with attempted killing, remains in detention limbo, as only the 'supreme court' may hear his case. OHCHR interview, 25 June 2018.

[113] On several occasions OHCHR was told that 'hearings on the merits' would be closed to the public. OHCHR was able, however, to attend two 'hearings' on the merits and two 'pronouncements' of 'judgments' in 'civil cases'; two 'preliminary hearings', two 'pronouncement of verdicts', one 'hearing on the merits' and one 'hearing' on challenging actions of 'MGB' at the 'military tribunal' of the 'Donetsk people's republic'.

[114] Human Rights Committee, General Comment no. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, para. 28.

[115] OHCHR interview, 19 July 2018. The lawyer was not aware of the details of the case, including the charges his client was facing and the stage of the 'proceedings'.

[116] In one case, a private lawyer hired by the detainee's family was denied access to his client's file. OHCHR interview, 23 May 2018. In another case, the defence lawyer was denied access to his client held in Izoliatsiia, and has not been provided with timely information on his client's health condition. OHCHR interviews, 5 and 10 July 2018.

VI. Democratic/civic space and fundamental freedoms

81. OHCHR continued to monitor the exercise of fundamental freedoms and documented 45 human rights violations and abuses during the reporting period in relation to the fundamental freedoms of opinion and expression, peaceful assembly and association, and religion, as well as the right to non-discrimination and equal protection under the law. The Ukrainian authorities were responsible for 36 of these human rights violations[117] and armed groups were responsible for seven. OHCHR is deeply concerned that, in government-controlled territory, extreme right-wing groups[118] perpetrated at least eight separate attacks, often with impunity.

A. Freedom of opinion and expression and freedom of the media

No one wants to be the next.

- A journalist about the attacks on media professionals and civil activists

82. During the period under review, OHCHR documented an increase in the number of physical attacks against media professionals and other chilling incidents impeding the exercise of their legitimate professional activities. OHCHR documented 30 cases that occurred in this reporting period involving violations of freedom of expression and freedom of the media that ranged from violent physical attacks (including one fatal) against media professionals and civic activists to acts of humiliation or intimidation.

83. OHCHR is alarmed by the increased brutality of some incidents. On 5 June 2018, in the Kharkiv region, an anti-corruption and environmental activist was found hanged in Eskhar village. On 21 June, members of an extreme right-wing group poured a liquid on a female journalist covering their protest in Kyiv[119] and later claimed during a TV interview that this was urine.[120] On 31 July, in Kherson, individuals threw acid on a female senior staff of Kherson city council, known for her anti-corruption views, causing severe burns to her face and body. OHCHR's concern lies not only in the nature of the attacks but also at the repeated claims from victims or their representatives indicating police negligence and/or protracted investigation.[121]

84. Long drawn-out investigations and police de-prioritization of cases involving attacks against civil society activists and media professionals continue to contribute to the compression of civic space as perpetrators are not brought to account. Law enforcement reported that they still had not identified a suspect in the July 2016 killing of renowned journalist Pavlo Sheremet, attributing the delay to the Russian citizenship of the victim and claiming that tracing potential suspects or persons of interest in the Russian Federation was complicated.[122] Additionally, the trial of two men accused of murdering journalist Oles Buzyna has been stalled since February 2018.[123] It was not until August 2018 that the court

[117] In five cases, the attack was allegedly perpetrated by Government actors, and in 10 cases, the Government failed to prevent, investigate and/or prosecute the known perpetrators of the attack.

[118] In this report, the term "extreme right-wing groups" refers to political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. In Ukraine, extreme right-wing groups have perpetrated attacks against Roma and other minorities, including LGBTQI. Through their actions, they bring into question the fundamental principle of non-discrimination by propagating an ideology based on racism, discrimination, xenophobia and intolerance. *See* Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

[119] OHCHR interview, 9 August 2018.

[120] The interview is available from https://www.youtube.com/watch?v=N4fFQa9BBMU.

[121] OHCHR interviews, 3, 6, 9 and 13 August 2018.

[122] Pavlo Sheremet was killed in Kyiv on 20 July 2016.

[123] Oles Buzyna was killed in Kyiv on 16 April 2015. On 28 November 2017, the Prosecutor's Office of Kyiv submitted the indictment against two men accused of executing the murder to the Shevchenkivskyi district court of Kyiv.

finally started hearing on the merits of the case due to procedural obstacles, administrative delays and the unavailability of judges. Meanwhile, there has been no progress in a parallel criminal proceeding, initiated by prosecutors in June 2017 to identify the organizers of the murder.[124]

85. OHCHR is concerned about measures taken by the Government in the name of countering security threats and preventing cybercrimes. Following a presidential decree banning 192 websites on 14 May 2018[125], a draft law pending Parliamentary review would vest the National Security and Defence Council with wide discretion and power to block online information resources without judicial oversight.[126] OHCHR reiterates that States must refrain from undue interference with the right to seek, receive and impart information, and recalls that any restriction on freedom of expression (including online expression) must be proportional and necessary to achieve the purported aim.[127]

86. As observed in past reports, activists calling for anti-corruption reforms remained vulnerable to violations and abuses aimed at silencing them.[128] On 7 June, the set-up of Ukraine's anti-corruption structure was completed in accordance with the recommendations of the Venice Commission, with the adoption of legislation creating the High Anti-Corruption Court. The Court will have jurisdiction over all future high-level corruption cases including those cases currently investigated by the National Anti-Corruption Bureau. The next critical steps to operationalize the Court will be the selection of national judges, which requires involvement of a Public Council of International Experts.[129]

Territory controlled by armed groups

We are constantly afraid of saying something that may be used against us.

We are paranoid to talk in public about anything sensitive. These are terrifying times.

- Parents of a conflict-related detainee in territory controlled by armed groups

87. In territory controlled by armed groups, the space for freedom of opinion and expression remained highly restricted. OHCHR documented the case of two men detained and charged with 'espionage', inter alia, for their pro-Ukrainian position expressed in social media.[130] More limitations were introduced by the self-proclaimed 'Donetsk people's republic' impinging on the ability of foreign media to report and work in armed group controlled territory. The local media currently operates mainly as tool for promoting those in control.[131]

88. OHCHR continued to document cases of human rights abuses that occurred in the earlier stages of the conflict linked to the forceful suppression of critical voices, which has

[124] OHCHR interview, 20 July 2018.

[125] Decree of the President of Ukraine No. 126/2018 enacting National Security and Defence Council Resolution dated 2 May 2018 "On Imposition and Cancellation of Personal Special Economic and Other Restrictive Measures (Sanctions)", available from http://www.president.gov.ua/documents/1262018-24150.

[126] Draft Law No. 6688 "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Information Security of Ukraine" was included in the agenda of Parliament on 21 June 2018 but has not been brought to a vote. There are indications it may again be tabled for vote during the September session. Draft law available from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62236.

[127] International Covenant on Civil and Political Rights, article 19(3).

[128] The highly criticized e-declaration requirements imposed for anti-corruption activists in March 2017 remained in force. See OHCHR Report, 16 February to 15 May 2018, para 87; and OHCHR Report, 16 May to 15 August 2017, para 95.

[129] The selection process of judges foresees a role for a new Public Council of International Experts (PCIE), a six-member body, which will have the duty to review the applications of candidates for the position of judges in the High Anti-Corruption Court and to assess them against integrity and professionalism criteria. Members of the PCIE will be selected by the High Qualification Commission of Judges from among the candidates nominated by the international organizations "with which Ukraine cooperates in the area of corruption prevention and counteraction in accordance with Ukraine's international treaties".

[130] OHCHR interviews, 17 and 20 July 2018.

[131] OHCHR interviews, 3 August 2018.

had a long-term impact in stifling fundamental freedoms. In one case, a former journalist of a national newspaper was detained by armed groups in Horlivka in February 2015 for his publications on social media; during his one-month detention, he was reportedly tortured and subjected to ill-treatment.[132]

89. As of 15 August 2018, at least one journalist and one blogger, both affiliated with the Kyiv bureau of 'Radio Liberty', remained detained in territory controlled by 'Donetsk people's republic' – Stanislav Asieiev (aka Vasin) and Oleh Halaziuk. According to numerous Ukrainian media reports, Stanislav Asieiev started a hunger strike in early July. With no access to places of deprivation of liberty in territory controlled by 'Donetsk people's republic', OHCHR was not able to verify allegations of the hunger strike or to assess Asieiev's physical and moral conditions.

B. Discrimination, hate speech, racially-motivated violence and manifestations of intolerance

After this attack every time I see a knife I get scared.

- A Roma victim attacked by members of extreme right-wing groups

90. During the reporting period, OHCHR documented eight incidents of discrimination, hate speech and/or violence targeting individuals belonging to minority groups or holding alternative or minority opinions. Four incidents involved violence by members of extreme right-wing groups, who often act with impunity.

91. In a worrisome continuing trend of violence against members of the Roma minority, OHCHR documented three attacks against Roma settlements in Kyiv, Ternopil and Lviv, reportedly perpetrated by members of extreme right-wing groups. In the most serious incident, on 23-24 June 2018, a group of young males attacked a Roma settlement in Lviv, stabbing one man to death and injuring three others, including a 10-year-old boy.[133] All three attacks resulted in the expulsion of the Roma communities from their homes. On 25 July, in Chernihiv region, three men brutally beat a Roma man and damaged his car.

92. On 24 May 2018, a lawyer representing the victims of a May 2017 attack on a Roma settlement in Vilshany[134] was violently attacked by a group of men, reportedly including a local prosecutor. The lawyer was threatened with death if he did not drop the case.

93. While OHCHR is concerned about the lack of progress in investigations into the Vilshany attack, it notes progress regarding the investigation and prosecution of the attack against Roma and their expulsion by the local community in Loshchynivka, in August 2016[135]. On 9 August 2018, the Odesa circuit administrative court partially satisfied the claims of seven Roma plaintiffs, ruling that the actions of the head of the village in support of the expulsion were illegal, however the court did not order payment of restitution damages and did not recognize the inaction of police during the forced eviction of Roma as a criminal offence.[136]

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132 OHCHR interview, 14 August 2018.

133 The alleged perpetrators were aged between 16 and 20 and claimed to be members of a newly-established extreme right-wing group called "Sober and angry youth". The new group is reportedly connected to the "Misanthropic Division", an ultra-nationalist group with ties to the Azov volunteer battalion, which claimed responsibility for an attack on LGBTQI activists in Lviv in March 2018. Six suspects were in detention as at August 2018 and two were under house arrest.

134 On 16 May 2017, a group of Roma were attacked in Vilshany village by a member of the Kharkiv regional council, the head of the Vilshany village council and others. One Roma was killed and four others injured. To date, no one has been held accountable for this killing and violence.

135 OHCHR meetings with Prosecutor's Office of Odesa, 10 July 2018, and National Police, 12 July 2018. *See also* OHCHR Report, 16 May to 15 August 2017, para. 131; OHCHR Report, 16 August to 15 November 2016, para. 152.

136 In reference to the case where local residents of Loshchynivka decided to evict Roma residents from the village.

94. OHCHR also documented two attacks against members of the LGBTQI community in June and July 2018.[137] In both cases, police initiated criminal investigations only on charges of "hooliganism". OHCHR notes that attacks against members of the LGBTQI community and other minorities are rarely classified under criminal provisions pertaining to hate crimes, which carry heavier penalties.

C. Freedom of peaceful assembly and association

95. Peaceful assemblies organized by minority groups or individuals holding alternative social and political opinions continued to be disrupted by members of extreme right-wing groups. On 19 May 2018, a Festival of Equality organized in Chernivtsi (Chernivtsi region) was disrupted by members of extreme right-wing groups, forcing the cancellation of the event while the organizers and participants had to be escorted by police from the venue.[138]

96. Due to this incident, threats of violence and an atmosphere of intolerance, LGBTQI activists decided not to organize Festivals of Equality foreseen throughout the country, fearing attacks by extreme right-wing groups. Instead, the lectures, seminars and discussions were organised to take place online only.

97. On 17 June 2018, approximately 3,500 participants took part in the Kyiv Pride Equality March, which took place without any major security incident.[139] OHCHR commends the professional conduct of police during the March, which ensured that participants could enjoy the right to peaceful assembly.[140] Also, there were no major security incidents during the Equality March in Kryvyi Rih on 21 July. Police were present and provided security for participants.

98. OHCHR notes that when extreme right-wing groups disrupted peaceful gatherings and police failed to facilitate the exercise of freedom of peaceful assembly, criminal cases have either not been promptly initiated or not initiated at all. For example, complaints were filed with police regarding the disruption of the Festival of Equality in Chernivtsi and of a public discussion on LGBTQI rights organized by Amnesty International in Kyiv in mid-May 2018.[141] In both cases, police refused to initiate a criminal case arguing that no elements of a crime had been identified.

99. OHCHR is concerned about reports of pressure on the National Bar Association in Kyiv concerning conflict-related cases or cases of defendants alleged to be affiliated with the armed groups (see above under Fair trial rights). OHCHR documented three physical attacks against legal defenders committed by C-14, with police either being negligent in not intervening during the attack or not effectively investigating the incidents.[142] In one case,

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[137] On 30 June 2018, an LGBTQI activist was violently attacked by a group of men in Kryvyi Rih. On 4 July 2018, PrideHub (an LGBTQI-friendly space in Kharkiv, was attacked during a meeting of a language club. The perpetrators used smoke and gas grenades, and destroyed furniture and other property. The club attendees were evacuated through a back door, and no casualties were reported.

[138] The event was disrupted by Traditions and Order, Katehon, and Sisterhood of St. Olha. No criminal case has been initiated concerning this incident.

[139] The march is organized annually by the LGBTQI community and calls for equal rights and protection for members of minority groups. In 2015 and 2016, members of extreme right-wing groups attacked participants in these marches.

[140] Some clashes reportedly occurred in the early morning, before the march started, and resulted in minor injuries to six counter-demonstrators (members of extreme right-wing groups) and five police officers. Fifty-six counter-demonstrators were arrested due to aggressive behaviour and released shortly after the event. During the march, police reacted effectively to small skirmishes with counter-demonstrators; no participants in the event sustained any injuries.

[141] The public discussion on "The Offensive against LGBTQI Rights as a Form of Censorship: The Russian experience" was disrupted by approximately 50 members of extreme right-wing groups, including Nemezida, Tradition and Order, Right Sector and the political party Svoboda.

[142] OHCHR interviews, 10, 14 and 15 August 2018.

the attack was followed by death threats in social media for one defence lawyer and his family.[143]

Territory controlled by armed groups

100. In territory controlled by armed groups, OHCHR continued to observe an absence of space for peaceful assemblies organized by residents at their own initiative, where critical opinions could be expressed. In fact, restrictions on exercising this freedom continued, albeit formalized, in territory controlled by 'Luhansk people's republic' through a 'decree' signed on 27 June 2018, requiring organizers of peaceful assemblies to seek prior approval. Such approval would be granted based on an assessment by either the 'ministry of state security' or the 'ministry of the interior'.

D. Freedom of religion or belief

101. During the reporting period, OHCHR documented six attacks against churches of the Ukrainian Orthodox Church of Moscow Patriarchate. For instance, on 5 August 2018, in Odesa, the words "FSB Branch"[144] was inscribed on the front entrances of three churches. Police opened criminal cases regarding two of these incidents.

Territory controlled by armed groups

102. In territory controlled by both 'republics', procedures for mandatory registration of all religious organizations limit freedom of religion or belief and create protection concerns for parishioners.

103. In territory controlled by 'Luhansk people's republic', a 'law' was adopted on 2 February 2018 to provide for a 6-month period during which all religious organizations wishing to operate in the territory had to register, and failure to register would be considered as having ceased operations.[145] The registration process has been extended to 15 October. It requires the submission of personal data of the founders of the organizations, and demands a minimum of 20 founders for an organization to be registered (resulting in members becoming founders). This requirement raises double concerns for many religious organizations. Some parishioners do not want the 'authorities' to know of their participation in a certain religious organization. Some fear facing issues in government-controlled territory if it becomes known that they are registered with the 'republic'.

104. Similarly, in territory controlled by 'Donetsk people's republic', a 'law' was adopted on 13 April 2018 "on freedom of religion and religious unions", requiring all religious organizations to complete a 'registration' procedure by 1 March 2019.[146] Those failing to do so will not be allowed to operate in territory controlled by 'Donetsk people's republic'.[147]

105. On 21 June 2018, 'MGB' closed the only functioning mosque in Donetsk. The premises were searched, religious literature was confiscated and two Muslim practitioners were questioned and forced to sign a commitment not to leave territory controlled by 'Donetsk people's republic'.

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[143] OHCHR interview, 14 August 2018.

[144] A reference to the Federal Security Service of the Russian Federation.

[145] On 2 February 2018, the 'people's council' adopted the 'law' on 'freedom of conscience and religious associations', which prescribes that a religious organization must have at least 20 founders. The organization's statute must include information about all founders and be submitted as part of the package of documents required for 'registration'.

[146] Although the 'law' was 'adopted' on 13 April 2018, the full text appeared online only on 16 May 2018, available from https://dnrsovet.su/zakonodatelnaya-deyatelnost/prinyatye/zakony/zakon-donetskoj-narodnoj-respubliki-o-svobode-veroispovedaniya-i-religioznyh-obedineniyah/.

[147] Available from https://bit.ly/2KieZQV.

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

106. he Russian Federation continued to apply its laws in Crimea and the city of Sevastopol in violation of the obligation under international humanitarian law to respect the legislation of the occupied territory.[148]

107. Further, OHCHR recorded flagrant violations of fair trial rights, including the retroactive application of Russian Federation penal law, arbitrary interference with privacy which disproportionately affected Crimean Tatars, and infringements on the exercise of freedom of religion. In total, OHCHR documented 47 violations and abuses during the reporting period; of this number 25 violations occurred within the reporting period; with the Government of the Russian Federation responsible for 22 and the Government of Ukraine for 3.[149]

A. Due process, fair trial rights, and rights of detainees

108. On 19 June 2018, a court in Simferopol sentenced five Crimean Tatar men for taking part in "mass disturbances involving violence" on 26 February 2014, handing them suspended prison sentences ranging from three and a half to four and a half years. They had all been arrested and charged in 2015[150] as part of a group of pro-Ukrainian demonstrators who staged a protest outside the Parliament of Crimea and clashed with pro-Russian supporters as tensions over the status of Crimea were rising ahead of the March 2014 'referendum'.[151]

109. In relation to the "26 February cases"[152], the Russian Federation applied its legislation retroactively to events preceding the implementation of Russian Federation legislation in Crimea, which commenced on 18 March 2014.[153] This contravenes the principle of legality as well as the obligation of an Occupying Power to maintain the penal legislation in force in the occupied territory and to apply it in court.[154]

110. In protest of what they believe to be politically motivated prosecutions of Ukrainian citizens in Crimea, several detainees went on hunger strike, including Ukrainian filmmaker Oleg Sentsov currently serving a 20-year prison sentence in the Russian Federation for terrorism offences allegedly committed in Crimea. OHCHR recalls that in accordance with international standards the Russian Federation authorities must upon the consent of

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[148] *See* Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), Article 43 of the Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, Geneva Convention IV on Civilians, art. 64.

[149] The violations attributable to the Government of Ukraine did not occur in Crimea itself, but concern events in mainland Ukraine with connection to the situation in Crimea. They are related to freedom of movement and access to public services.

[150] Three of the individuals were released on personal guarantee in 2015, while two were released in 2017 on house arrest.

[151] In addition, on 12 September 2017, a deputy chair of the Mejlis was sentenced to eight years of imprisonment for allegedly encouraging demonstrators to use violence. He was pardoned a few weeks later. *See* OHCHR Report, 16 August to 15 December 2017, paras. 133-134.

[152] On 26 February 2014, during a rally in Simferopol pro-Ukrainian and pro-Russian protesters faced off, leading to a stampede and the death of two pro-Russian demonstrators. The defendants were accused of "mass disturbances" involving the use of force against pro-Russian demonstrators: fighting, throwing glass bottles and other heavy objects, using tear gas and pushing them with their weight.

[153] On 18 March 2014, a "Treaty on the Accession of the Republic of Crimea to the Russian Federation" was signed in Moscow, and on 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law "On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation".

[154] Geneva Convention IV, art. 70.

detainees on hunger strike regularly carry out medical examinations in order to determine necessary treatment and ensure appropriate medical care.[155]

B. Freedom of religion, conscience and thought

111. The prosecution on terrorism-related charges of Muslims suspected of membership in radical religious organizations and groups in Crimea continued. In May 2018, OHCHR recorded three new cases of detention of Crimean Tatar men accused by Russian Federation authorities of affiliation with Hizb ut-Tahrir.[156] In total, since the beginning of the occupation, at least 33 Crimean residents have been arrested for alleged ties with radical Muslim groups, and four of them have been convicted.

112. Another ten individuals accused of membership in Hizb ut-Tahrir stood trial in Rostov-on-Don in the Russian Federation during the reporting period, in violation of international humanitarian law prohibiting the forcible transfers of protected persons outside the occupied territory, regardless of the motive.[157]

113. In the majority of the cases documented by OHCHR, the charges against the Muslims were based on the content of conversations amongst themselves, during which they discussed global political developments, religious writings, Muslim culture and application of sharia law.[158] In none of the cases known to OHCHR did Russian Federation authorities present any credible evidence that the defendants called for the use of force, violation of public order or engagement in any unlawful activity in Crimea. OHCHR recalls that freedom to manifest one's religion or belief may be subject only to limitations that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.[159]

C. Right to privacy and family life

114. During the period under review, OHCHR documented 14 house raids by the Federal Security Service of the Russian Federation (FSB) and police, including 13 which targeted properties owned by Crimean Tatars. This follows a pattern identified by OHCHR since early 2017 when 90 out of 102 documented searches concerned properties of Crimean Tatars. These actions were usually carried out with the justification of searching for weapons, drugs or literature with "extremist" content forbidden under Russian Federation law. OHCHR notes that the Russian Federation's anti-extremism law gives wide discretion to law enforcement agencies to interpret and apply its provisions, which can be viewed as an infringement of the principles of legality, necessity and proportionality.[160] In addition, the raids often involved excessive use of force and the searches extended beyond what was warranted by the circumstances,[161] thereby interfering with the rights to privacy and family life, in violation of international human rights law.[162]

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[155] According to the information of the High Commissioner for Human Rights of the Russian Federation (Ombudsperson), Sentsov is held in a separate cell of the colony's medical ward where he regularly receives nutrition replacements and infusion therapy, including parenteral nutrition. Statement available from http://ombudsmanrf.org/news/novosti_upolnomochennogo/view/upolnomochennyj_poluchila_ot_fsin_rossii_spravku_o_sostojanii_zdorovja_olega_sencova.

[156] On 14 February 2003, the Supreme Court of the Russian Federation banned *Hizb ut-Tahrir* as a terrorist organization.

[157] Geneva Convention IV on Civilians, art. 49.

[158] OHCHR interview, 7 June 2018.

[159] International Covenant on Civil and Political Rights, art. 18(3).

[160] *See* Opinion No. 660/2011on the Federal Law on Combating Extremist Activity of Russian Federation, The European Commission for Democracy Through Law (Venice Commission), 1 June 2012.

[161] For example, on 10 August 2017, FSB and special force police (OMON) stormed into a private house without presenting any grounds or warrant for a search. They forced all the adults face down on the

D. Property rights

115. OHCHR noted changes in the long-standing issue of property rights of formerly deported persons, predominantly Crimean Tatars. Following their mass return between 1989 and 1994 after decades-long exile, Crimean Tatars started settling spontaneously across the Crimean peninsula and constructing unauthorized settlements. Lacking a legal framework and large-scale state reintegration programme, Ukraine struggled to cope with this massive phenomenon. Their settlements included individuals who spontaneously squatted on land and collective occupation of land plots, which created potential for conflict. In August 2013, an estimated 2,000 hectares were occupied by 56 unauthorized settlements involving an estimated 8,000 to 15,000 people.[163]

116. After March 2014, the Russian Federation authorities in Crimea adopted special legislation enabling "land squatters" to legalize their property claim through inclusion in a dedicated electronic database.[164] As of October 2017, nearly 4,300 persons, about 55 per cent of those registered in the database, were allocated land plots free of charge.[165] On 17 May 2018, the head of the Crimean Committee on Interethnic Relations announced plans to allocate an additional 1,700 land plots to registered persons.[166]

VIII. Technical cooperation and capacity-building

117. OHCHR engages in technical cooperation and capacity-building activities to assist the Government of Ukraine and civil society to protect and promote human rights.

118. Upon request of the Ministry of Justice of Ukraine, in June 2018, OHCHR provided expert advice on a methodology developed by the Ministry for monitoring and evaluation of implementation of the National Human Rights Strategy of Ukraine and its Action Plan. OHCHR recommended ways to improve reporting by implementing agencies and information management by a coordinating body in order to measure progress in achieving the objectives and goals of the National Human Rights Strategy. OHCHR will further support the Ministry in implementing the recommendations to improve the Action Plan monitoring, reporting and evaluation processes and thus in promoting more effective implementation of the National Human Rights Strategy.

119. OHCHR continued promoting the implementation of Universal Periodic Review (UPR) recommendations made to Ukraine during the third UPR cycle (2012-2017). To facilitate this process, OHCHR produced an updated compilation of thematically clustered recommendations of the United Nations human rights mechanisms addressed to Ukraine, including the latest UPR recommendations accepted by the Government.

120. OHCHR also continued to raise awareness among Government actors of various international human rights norms and standards. On 20 June 2018, OHCHR delivered a session on international standards of housing, land and property rights of IDPs and other conflict-affected population for approximately 25 judges of the Supreme Court and lower courts in Donetsk and Luhansk regions (controlled by the Government), including judges who have been displaced from territory controlled by armed groups.

121. On 21 June, as part of the institutionalized pre-deployment programme for officers of the Civil-Military Cooperation unit (CIMIC), OHCHR delivered a session on prevention

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floor, beat the male residents and searched the house in a brutal manner. They then coerced a female resident into signing a document which she had no chance to read. OHCHR interview, 17 July 2018.

[162] International Covenant on Civil and Political Rights, art. 17.

[163] The integration of formerly deported people in Crimea, Ukraine. Needs assessment, August 2013, available from https://www.osce.org/hcnm/104309?download=true.

[164] Law of the Republic of Crimea No. 66-ЗРК/2015 "On allocation of state and municipal land plots and certain issues of land relations", available from http://www.crimea.gov.ru/textdoc/ru/7/act/66z.pdf.

[165] https://rg.ru/2016/11/24/reg-ufo/v-krymu-uchastniki-polian-protesta-poluchili-zemliu-menshe-chem-za-god.html.

[166] https://crimea.ria.ru/society/20180517/1114469971.html.

of arbitrary detention, torture and conflict-related sexual violence, as well as on the protection of freedom of movement and housing, land and property rights, to approximately 20 military officers to be deployed to eastern Ukraine as part of CIMIC. OHCHR has been participating in the pre-deployment programme since September 2017, and has delivered a total of five trainings for over 150 officers.

122. OHCHR referred 30 allegations of human rights violations and abuses to specific duty-bearers. To the Government of Ukraine, 13 violations were raised with two cases partially addressed and criminal investigations opened in four cases. In armed group controlled territory, 18 human rights violations and abuses were raised in 15 cases with 'Donetsk people's republic' and 2 issues were raised with 'Luhansk people's republic'. The 'Donetsk people's republic' fully addressed one case, and opened an enquiry in another.

IX. Conclusions and recommendations

We are turning into demoralized and broken down people as a result of this never-ending armed conflict.

- Resident of a village near the contact line

123. Since the previous reporting period, the conflict in eastern Ukraine has persisted, punctuated with a phase of heated hostilities, and OHCHR continued documenting violations and abuses by all parties to the conflict against civilians on either side of the contact line.

124. In Crimea, the Government of the Russian Federation, as the Occupying Power, continued to violate its obligations under international humanitarian law with regard to human rights and fundamental freedoms, notably through discriminatory practice and retroactive application of laws of the Occupying Power that infringe on an individual's right to housing, freedom of religion, speech and association.

125. The civilian casualty figures documented by OHCHR again demonstrate that the ceasefire, which was partially observed following the parties' recommitment under the 1 July 'harvest ceasefire', led to a significant decrease in civilian casualties, notably thanks to reduced use of direct and indirect explosive weapons targeting populated areas. However, despite the 'harvest ceasefire', civilian casualties persisted due to the ever-present lethal contamination of landmines and explosive remnants of war along the contact line.

126. OHCHR notes continued impunity for conflict-related human rights violations in Ukraine. In this regard OHCHR recalls that the Government of Ukraine bears the primary responsibility to investigate and prosecute violations of the rights to life, liberty and security of persons, noting that failure to do so, may constitute a separate violation under article 2 of ICCPR.

127. A dire social and economic situation continues to prevail among conflict-affected civilians living along the contact line. The surge in crossings during the summer months underscored the risks people are willing to take to access entitlements and social benefits. The spike in hostilities in May through June spotlighted the devastating effects on people caught in the conflict who lose their homes and have no recourse to recover, start over, or find alternative accommodation.

128. OHCHR is concerned about the upcoming winter which worsens the conditions for civilians caught on both sides of the contact line. OHCHR is also concerned about the human rights situation ahead of the elections in 2019, notably the increasing frequency and gravity of violence threatening civic space.

129. **Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends the following, based on the issues identified from 16 May to 15 August 2018:**

130. **To the Ukrainian authorities:**

Cabinet of Ministers

(a) Adopt a comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities, in accordance with international standards[167]; and Cabinet of Ministers to adopt specific remedy and reparation measures for children with the Status of a Child Affected by Armed Hostilities and Armed Conflicts.

(b) Create and maintain a coordinated system to register property destroyed and damaged in the context of the armed hostilities, and linked registry; develop a comprehensive mechanism for restitution of property and compensation for any damages and destruction.

(c) Ensure swift implementation of the law 'On the legal status of missing persons', in particular by providing sufficient resources for effective realization of the mandate of the Commission on Missing Persons.

Judges

(d) Carefully review all plea bargain agreements and refuse to accept any guilty plea when there are reasonable grounds to believe that it has been obtained by coercion, including torture or ill-treatment.

State and local authorities

(e) Systematically and publicly condemn all acts of violence committed based on race, sex, religion, language, national or ethnic origin, political or social opinion, sexual orientation, gender identity or any other grounds of discrimination prohibited under international human rights standards.

(f) Prepare and make available safe, adequate alternative accommodation as a response to the needs of the civilian population affected by armed hostilities.

(g) Where military presence within civilian areas is justified due to military necessity, take all possible steps to protect the civilian population and their property; develop a procedure for documentation of military use.

Office of the Prosecutor General and law enforcement agencies

(h) Ensure effective investigations into allegations of torture and ill-treatment, arbitrary detention and enforced disappearance, including those allegedly committed by State actors or individuals acting with State authorization, support or acquiescence.

(i) Ensure that crimes, such as those referred to in recommendation (e) are appropriately classified, effectively investigated in a timely manner, and that perpetrators, members of extreme right-wing groups as any others, are held accountable.

131. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':**

(a) Bring an end to the conflict by strictly adhering to the ceasefire and implementing other obligations foreseen in the Minsk agreements, in particular regarding the withdrawal of prohibited weapons and disengagement of forces and hardware.

(b) Ensure full compliance with international humanitarian law fundamental principles of distinction, proportionality and precaution, including by

[167] In particular United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

immediately ceasing the use of weapons with indiscriminate effects in areas populated and used by civilians, particularly weapons with a wide impact area or the capacity to deliver multiple munitions over a wide area.

(c) Take all feasible precautions to minimize harm to the civilian population during operations, including by locating military objectives such as armed forces and weapons outside of densely populated areas, and refraining from deliberately targeting civilians or civilian objects, including objects indispensable to the survival of the civilian population, such as water infrastructure.

(d) Clear explosive remnants of war, take measures to protect civilians from the effects of these weapons, and assist the efforts of international and non-governmental organizations working in these areas, in line with ICRC Protocol V, Certain Conventional Weapons (2003).

(e) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Ensure unimpeded access of OHCHR and other independent international observers to all places of deprivation of liberty, including for private confidential interviews with detainees.

(f) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Refrain from holding individuals in incommunicado detention and provide immediate information on the whereabouts of detainees to their families.

(g) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Take practical steps to enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory.

(h) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': eliminate intolerant rhetoric of opposing or alternative points of view.

132. To the Government of the Russian Federation:

(a) Implement General Assembly Resolution 72/190 of 19 December 2017, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea.

(b) Respect obligations applicable to an Occupying Power pursuant to international humanitarian law, including the obligation to respect laws in force in an occupied territory.

(c) Reverse all verdicts issued by courts in Crimea on the basis of retroactive application of Russian Federation legislation to events which preceded the occupation.

(d) Refrain from arresting and prosecuting Crimean residents for alleged membership in organizations and groups considered extremist in the Russian Federation but legal under Ukrainian law.

(e) Return to Crimea all protected persons who have been transferred to the territory of the Russian Federation to stand trial or serve criminal sentences in violation of international humanitarian law.

(f) Put an end to the abusive police raids of Crimean Tatars' properties, which violate the right to respect for private and family life.

133. To the international community:

(a) Continue using all diplomatic means to press all parties to immediately end hostilities and implement all obligations foreseen in the Minsk agreements, emphasizing how the active armed conflict causes suffering of civilians and hampers prospects for stability, peace and reconciliation.

(b) Use all influence possible to ensure unimpeded access and operation of international organizations in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.